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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION ONE

THE PEOPLE, Plaintiff and Respondent, v. LEONARDO SERRANO, Defendant and Appellant.	B192613 (Los Angeles County Super. Ct. No. NA062008)

APPEAL from a judgment of the Superior Court of Los Angeles County, Gary J. Ferrari, Judge. Affirmed.

Elizabeth A. Missakian, under appointment by the Court of Appeal, for Defendant and Appellant.

Edmund G. Brown, Jr., Attorney General, Dane R. Gillette, Chief Assistant Attorney General, Pamela C. Hamanaka, Assistant Attorney General, Robert F. Katz and Michael J. Wise, Deputy Attorneys General, for Plaintiff and Respondent.

Leonardo Serrano was convicted of two counts of selling or transporting heroin and one count of possession of heroin for sale, with true findings on weight allegations ancillary to all three counts. (Health & Saf. Code, §§ 11352, subd. (a), 11351, 11352.5, subds. (1), (2), Pen. Code, § 1203.07, subds. (a)(1), (2).) Serrano was sentenced to state prison for a term of four years (four years on one of the sale counts, with concurrent terms on the other sale count (four years) and the possession count (three years)). He appeals, challenging an evidentiary ruling, the sufficiency of the evidence supporting the weight enhancements, and his concurrent sentence on the possession count on the ground that it should have been stayed. (Pen. Code, § 654.) We reject his claims of error and affirm the judgment.

FACTS

Serrano's crimes arose out of his dealings with Luis Lopez, an informant paid by the Drug Enforcement Agency.

In early 2004, Lopez was told that he could purchase heroin from Serrano and the two met shortly thereafter. Serrano gave Lopez a telephone number to use for future drug transactions.

In June, Serrano agreed to sell one ounce of heroin to Lopez for $1,300 and they arranged to meet in a King Taco parking lot on June 3. A DEA agent searched Lopez before the meeting, then gave him $1,300 in marked bills. While DEA agents watched, Serrano handed drugs to Lopez, and Lopez paid Serrano. (Count 1, selling heroin.)

Another deal was arranged a week later, this time for the purchase of two ounces of heroin for $2,600 (later reduced to $2,500), with the meeting to take placed on July 6 at a McDonald's parking lot in Long Beach. When Lopez arrived at the parking lot, Serrano got into Lopez's car and gave him the drugs. Lopez then got out of the car and signaled the watching DEA agents who arrested Serrano. (Counts 2 and 3, selling heroin and possessing heroin for sale.)

At trial, the People presented evidence of the facts summarized above, plus expert testimony to establish that the substance was heroin, that the heroin obtained by Lopez on June 3 weighed 25.20 grams, and that the heroin recovered on July 6 weighed 49.97 grams. The jury rejected Serrano's defense (a vague claim of entrapment and gang involvement presented through his own testimony) and convicted him as charged.

DISCUSSION

I.

Serrano contends the trial court should have allowed him to impeach Lopez with a 1997 misdemeanor conviction for unlawfully taking a vehicle. We disagree.

Before trial, the court held a hearing to consider whether defense counsel could use Lopez's prior conviction, with the prosecutor objecting that it was only a misdemeanor, too remote, and in any event would require proof of the underlying criminal conduct (not just the fact of the conviction). (*People v. Wheeler* (1992) 4 Cal.4th 284.) After establishing that Lopez had no other criminal convictions, the court refused to allow its use (notwithstanding that it involved moral turpitude) on the ground that it would be more prejudicial than

probative.[1] At trial, Lopez testified about his involvement, and a police officer and a DEA agent testified that they had worked closely with Lopez and trusted him.

The trial court's ruling was not an abuse of discretion. (*People v. Moten* (1991) 229 Cal.App.3d 1318, 1325-1326 [the exclusion of evidence is within the trial court's discretion].) Prior misdemeanor *conduct* involving moral turpitude may in the trial court's discretion be the subject of inquiry by asking the witness whether he committed the conduct, but the trial court has broad discretion to exclude such evidence when its probative value is substantially outweighed by its potential for prejudice, confusion, or undue consumption of time (*People v. Wheeler, supra,* 4 Cal.4th at p. 297), particularly when the conviction is remote in time (*People v. Beagle* (1972) 6 Cal.3d 441, 453). On the facts of this case, there was nothing arbitrary or capricious about the trial court's exclusion of a nine-year-old prior. (*People v. Jordan* (1986) 42 Cal.3d 308, 316.)

The fact that the officer and the DEA agent essentially vouched for Lopez's credibility does not transform the trial court's ruling into an abuse of discretion, and Serrano offers no authority to support his claim that it does. More to the point, the error, if there was one, could not possibly have been prejudicial -- because Serrano's testimony included admissions of every element of the charged offenses. (*People v. Watson* (1956) 46 Cal.2d 818, 836.)

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[1] We summarily reject the Attorney General's contention that Serrano waived this issue by failing to raise it again at the time of Lopez's testimony. (*People v. Gibson* (1976) 56 Cal.App.3d 119.)

II.

Serrano contends there is insufficient evidence to support the true findings on the weight allegation findings. (Health & Saf. Code, § 11352.5, subds. (1), (2); Pen. Code, § 1203.07, subd. (a)(1)(2).) We disagree.

Subdivision (1) of Health and Safety Code section 11352.5 imposes an increased penalty for any "person who is convicted of violating Section 11351 of the Health and Safety Code [possession for sale of a controlled substance] by possessing for sale ***14.25 grams or more of a substance containing heroin***." (Emphasis added.)

Subdivision (a)(2) of Penal Code section 1203.07 prohibits probation or a suspended sentence for any "person who is convicted of violating Section 11352 of the Health and Safety Code [sale of heroin] by selling or offering to sell ***14.25 grams or more of a substance containing heroin***." (Emphasis added.)

The undisputed expert testimony at trial established that the substance sold on June 3 weighed 25.20 grams, and the substance sold on July 6 weighed 49.97 grams. Serrano concedes as much, but claims (without authority) that the weight of the substance is immaterial and that, for the enhancement allegations to apply, the weight of the heroin itself must be at least 14.25 grams. As the statutory language makes clear, Serrano is wrong -- both sections speak in terms of the weight of the "substance containing heroin," not the weight of the heroin. Accordingly, sufficient evidence supports the enhancements.

(*People v. Pieters* (1991) 52 Cal.3d 894, 902-904; *People v. Burgio* (1993) 16 Cal.App.4th 769, 774-776; *People v. Hard* (2003) 112 Cal.App.4th 272.)[2]

III.

Serrano contends the concurrent term imposed for count 3 should have been stayed. We disagree.

Count 1 was based on the June 3 sale of heroin. Counts 2 and 3 were based on Serrano's July 6 conduct, the former charging the sale or transportation, the latter charging possession for sale. As noted above, the trial court sentenced Serrano to state prison for four years (midterm) for count 1, with concurrent sentences for counts 2 and 3 (another four-year midterm for the second sale, and the midterm of three years for the possession for sale). As both sides agree, the question is whether the trial court's finding that Serrano acted pursuant to different intents and objectives on July 6 is supported by substantial evidence. (*People v. Avalos* (1996) 47 Cal.App.4th 1569, 1583.) We answer the question affirmatively.

We agree with the Attorney General that Serrano entertained multiple and independent criminal objectives on July 6, as shown by evidence that Serrano engaged in a prior narcotics transportation on the same day when he obtained the heroin in North Hollywood, then transported it to Long Beach to sell it to Lopez. (According to Lopez's testimony, Serrano told him that he could not meet at the McDonald's parking lot at the time originally agreed because "he

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[2] Our conclusion makes it unnecessary to consider Serrano's suggestion that remand is appropriate to permit the court to consider probation. (Pen. Code, § 1203.07, subd. (a)(1)(2).)

had to go get the drugs in North Hollywood" and would get stuck in the heavy afternoon traffic.) There is also the fact that, at the time of his arrest, Serrano was carrying a cell phone and $844 in small bills (which according to the expert testimony at trial showed that he sold drugs to different individuals). For these reasons, the trial court's implied finding of independent objectives is supported by substantial evidence and the concurrent sentences are proper. (*People v. Akins* (1997) 56 Cal.App.4th 331, 339-340; *People v. Liu* (1996) 46 Cal.App.4th 1119, 1135-1136; *People v. Evers* (1992) 10 Cal.App.4th 588, 604.)

DISPOSITION

The judgment is affirmed.

NOT TO BE PUBLISHED.

VOGEL, Acting P.J.

We concur:

ROTHSCHILD, J.

JACKSON, J.*

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*Judge of the Los Angeles Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.